



DEPARTMENT OF VETERANS AFFAIRS  
Veterans Health Administration  
Palo Alto Health Care System  
3801 Miranda Avenue  
Palo Alto, CA 94304

In Reply Refer to: 00PO  
FOIA tracking number: 19-09065-F

July 8, 2019

Nina Soden  
Joseph Swerdzewski and Associates, LLC  
2711 Tammerack Ln  
Owens Cross Roads, AL 35763  
nsoden@jsafed.com

Dear Ms. Soden:

I have received and am processing a Freedom of Information Act (FOIA), 5 U.S.C § 552 request from Mr. Jasper Craven, of Muck Rock News. Mr. Craven has requested a copy of *"all contract details- including copies of draft and final contracts and email communication between agency and private sector stakeholder- between VA's Strategic Acquisition Center and Joseph Swerdzewshi And Associate, LLC between Jan 20, 2017 to June 30, 2019. Contract VA26117P2760 and VA26117P1088."* I have enclosed a copy of the FOIA request for your information. Also enclosed is a copy of the records we have identified as responsive to this request.

In processing this request, I must determine whether the (b)(4) exemption of FOIA, 5 U.S.C § 552, is applicable and should be invoked to withhold the requested documents, in whole or in part from the FOIA requester. Exemption 4, permits federal agency's to withhold from disclosure "trade secrets and commercial or financial information obtained from a person and which is privileged or confidential".

It is my determination that the information in question was not a "voluntary" submission but was "required" to be submitted in order to participate in the contracting process. Therefore, the National Parks standards apply and the "competitive harm prong" is the test that will be utilized to justify any claim to Exemption 4 protection. Such information is protected from disclosure if its release to the public would cause substantial harm to the competitive position of the submitter of the information. While actual harm need not be shown, actual competition and the likelihood of substantial competitive injury must be demonstrated.

The issue of whether Exemption 4 should be invoked in this case rests solely upon a factual determination of whether actual competition exists and whether release of the documents in question to Mr. Craven is likely to cause substantial competitive injury to your company. In making this determination, I cannot rely on a merely conclusory assertion of possible competitive harm. I need to understand exactly how the FOIA

requestor could use the disclosed information to create a significant harm to your company's commercial interests.

Accordingly, I request that, if you object to the release of any portion of the enclosed documents to Mr. Craven, you provide me with a written explanation, within 10 working days of the date of this letter, outlining the sufficient detail why and how your competitive position would likely suffer harm if the documents were disclosed. Please clearly indicate which portion or portions of the documents you consider would result in competitive harm to your company if disclosed.

If I do not receive a response from your company within 10 working days, July 22, 2019, from the date of this letter, I will conclude that your company does not wish to present any objections to the disclosure of the documents requested and will make a determination given that consideration.

Upon receipt of any such written explanation submitted by your company, I will make a determination regarding whether or not to disclose the requested documents. If I decide that some or all of the information that you wish to prevent being disclosed falls outside the protection of the Exemption 4 and should be disclosed, I will provide you with written notice of my intent to disclose such information 10 working days prior to releasing the information to the requestor.

Thank you for your cooperation in this matter. If you should have any questions, please contact the VA Palo Alto FOIA group at (650) 493-5000, extensions 69244 or via email [PALOALTOFOIA@va.gov](mailto:PALOALTOFOIA@va.gov)

Sincerely,



Nancy Ungson  
FOIA Officer

Enclosure

cc: Mr. Craven's request